The gratuitous holding of invalidity of that Patent should be set aside.

The device of Petitioners herein incorporates no non-functional feature of the device of Respondent. The imitation of a device which incorporates only the functional features of a competing device is not unfair competition. The holding of the District Court in this respect should be set aside.

It is respectfully urged that this Petition for Writ of Certiorari should be granted and the Writ allowed in order that this Court may properly make declaration for the correction of the manifest errors involved.

Respectfully submitted,

OSRO COBB,
Tower Building,
Little Rock, Arkansas,
Counsel for Petitioners.

J. HEISKELL WEATHERFORD, JR.,
1438 Commerce Title Building,
Memphis, Tennessee,
Associate Counsel for Petitioners.

APPENDIX.

APPENDIX A.

United States Court of Appeals
for the Eighth Circuit.

No. 18,209.

Crane Boom Life Guard Co., Inc., et al.,
Appellants,
v.
Saf-T-Boom Corporation, et al.,
Appellees.

Appeal from the United States District Court for the Eastern District of Arkansas.

[June 30, 1966.]

Before Vogel, Chief Judge, Matthes and Mehaffy, Circuit Judges.

Matthes, Circuit Judge.

This contempt proceeding grows out of a consent decree entered on May 31, 1962 in the United States District Court, Eastern District of Arkansas.

Following the issuance of a show cause order by Judge J. Smith Henley, the framing of the issues, and a plenary hearing, the District Court entered a decree on July 15, 1965 from which the appellants have perfected this appeal.

The history of this action is important. Saf-T-Boom, the assignee and owner of the so-called Thomas Patents Nos. 2,950,016 and 2,989,194, commenced an action on April 6, 1962 to enjoin infringement of the patents. The defendants were Crane Boom Guard Co., Inc. and its principal

stockholders, H. P. Merritt, Jr., S. A. Coffey and Arthur J. Thomas.[1]

After a partial trial of the infringement action on May 31, 1962, plaintiff and defendants, through their respective lawyers, compromised their differences, and agreed that a consent decree should be entered. The decree, prepared and approved by lawyers on both sides, was entered by the court on May 31 and provides:

> "On this day, the trial of this cause having been partially finished, the plaintiff and defendants by and through their respective attorneys, E. M. Arnold and Shelby R. Blackmon, announced to the Court that the parties have agreed upon a consent decree in this cause.
>
> "It is Therefore Considered, Ordered, Adjudged and Decreed by the Court in accordance with the agreement and consent of the parties announced to the Court, that the defendants, and each of them be and they hereby are permanently enjoined from infringing United States Patents Nos. 2,950,016 and 2,989,194.
>
> "It is Further Ordered, Adjudged and Decreed that no damages be awarded to either the plaintiff or the defendants.
>
> "It is Further Ordered, Adjudged and Decreed that the costs of this action be and they are hereby assessed against the plaintiff."

On November 13, 1962, Crane Boom Guard Co., Inc., H. P. Merritt, Jr., and S. A. Coffey filed a motion for relief under Rule 60 (b) of F. R. Civ. P. After a full hearing, Judge Henley denied the motion. No appeal was taken from that order. Judge Henley also filed a supporting memorandum opinion which contains findings of

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1 The Thomas Patents were developed by Arthur J. Thomas. They describe an insulating device for installation on the metal booms of machinery such as cranes and drilling apparatus, for the purpose of protecting the operators of the machinery from death or injury, resulting from the booms coming in contact with uninsulated high tension power lines.

fact. That opinion is a part of the record in this appeal, and from it we glean these pertinent facts.

The movants (Thomas, who was enjoined by the original decree, did not seek to have it set aside) asserted that the decree did not express the true settlement agreement, in that movants had not agreed to the entry of an injunction restraining infringement of the Thomas Patents; that there was "undue cooperation" between counsel for plaintiffs and movants' original attorney; that they did not become aware of the contents of the decree until shortly before the motion for relief was filed on November 13, 1962. It was developed at the hearing that Crane Boom Guard Co., Inc., the corporate moving party, had been dissolved. Upon motion and pursuant to applicable Arkansas Statutes, the directors as trustees, were included as moving parties.

Based upon undisputed evidence, Judge Henley found that the terms of the settlement of the infringement action were, (a) the corporate defendant (Crane Boom Guard Co., Inc.) should be dissolved; (b) stock in plaintiff corporation was to be issued to Merritt, Coffey, Thomas and Shelby R. Blackmon;[2] (c) Merritt and Blackmon were to be elected to plaintiff's board of directors; (d) Merritt and Thomas were to be employed by plaintiff at salaries of $100.00 per week and $75.00 per week, respectively; (e) Coffey and Thomas were to assign to plaintiff certain interests in the Thomas Patents which they claimed individually; (f) neither side should be awarded damages and the costs were to be paid by plaintiff.

The terms of the settlement were effectuated and, as Judge Henley found, "apparently things were going smoothly until the latter part of July." On July 27, at a meeting of plaintiff's board of directors, C. H. Earl, president of plaintiff, announced that the cash position of the corporation was weak; that he was eliminating his

2 Mr. Blackmon, an attorney, represented defendants in the infringement action and had been president of the corporate defendant.

salary and he requested Thomas and Merritt to accept salary reductions. Thomas acceded but Merritt refused. Later, Merritt ceased working for plaintiff and resigned from its board of directors. The hearing on the motions also developed that on September 5, 1962 Coffey had filed with the Patent Office, an application for a patent on an insulating device for crane booms. That application had not been acted upon at the time the motion was denied on January 11, 1963.

We turn now to the events which occurred subsequent to the denial of the motion for relief from the injunction. On August 13, 1963, the Patent Office issued Patent No. 3,100,575 to S. A. Coffey for "Crane Boom Life Guard."[3] Coffey and Associates organized a corporation known as Crane Boom Life Guard Co., Inc., (Life Guard) and Coffey assigned his patent to that corporation. Thereafter, pursuant to arrangements with Life Guard, Lon and Pat Weyland manufactured the devices which were sold in competition with the boom guards sold by Saf-T-Boom.

The contempt action was instituted in April, 1964 by Saf-T-Boom. The order to show cause was directed to S. A. Coffey, Life Guard, Lon and Pat Weyland and Weyland Machine Shop. Later, C. H. Earl, president of Saf-T-Boom, and Arthur J. Thomas were added as parties plaintiff. Mel Epperson, Freda Epperson, C. E. Haile, Pauline Haile, shareholders of Life Guard, Osro Cobb, the attorney who incorporated Life Guard, and C. H. Sansom, an independent contractor, who manu-

3 In regard to the Coffey patent, the District Court found in its memorandum opinion filed in the contempt action: "At the commencement of the trial of the current issues, which took place in May of this year, counsel for Life Guard conceded, and the Court now finds independently, that the Coffey device infringes the Thomas patents, if those patents are valid. In this connection the Court fully agrees with Saf-T-Boom that the boom guard marketed by Life Guard is essentially a duplicate of the device described in the Thomas patents. Both of the devices accomplish the same end, by the same means, and in the same manner. As a matter of fact, apart from the possession of the Coffey device of a hook on the end of the guard, the devices are practically indistinguishable. And in the Court's estimation the hook on the Coffey device is not of sufficient importance to distinguish it from the Thomas device as far as patent law is concerned."

factured a boom guard in accordance with the specifications of the Coffey Patent, were added as parties defendant.

In the contempt trial, Life Guard and its allies, advanced the theory that the Thomas Patents were invalid, and that Saf-T-Boom is infringing the Coffey Patent. They denied that they were guilty of contempt, their position being that one cannot infringe an invalid patent.[4] Although the court received evidence on the question of the validity of the Thomas Patents and the Coffey Patent, it is abundantly clear that the case turned on the effect and scope of the 1962 consent decree. After discussing the doctrine of res judicata, the court arrived at the conclusion that "the consent decree bound Coffey, Merritt, and Thomas personally, as well as Crane Boom Guard Company, Inc. Life Guard is in direct privity with Coffey, and in the court's view that privity includes not only the corporation itself but also the corporation's founders and stockholders."

Although the court found that the Coffey device infringes the Thomas Patents, it refrained from adjudging Coffey or any other party guilty of contempt.[5] The court concluded, however, that Saf-T-Boom was entitled to have the original injunctive decree extended to include Life Guard. Accordingly, the court decreed "that Crane Boom Life Guard Company, Inc., which is now a party to this litigation, together with its officers, agents, employees,

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4 This is not true as to the Weylands. They filed a response to the order to show cause, alleged that they were unaware of the injunction, that they had merely manufactured items for Life Guard, had discontinued such manufacturing by reason of the order to show cause and agreed to abide by all orders of the court. The Weylands did not appear as witnesses. Although we find no order dismissing them, they do not appear as appellants in this action and, seemingly, all appellants and appellees recognize that the Weylands are no longer parties.

5 Judge Henley logically reasoned: "Mr. Coffey is not a lawyer or even an engineer. He is a barber with a sideline interest in inventions, particularly boom guards. As a layman he may well have thought that if his device was novel enough to induce the Patent Office to patent it, he would be protected in its manufacture and sale as long as he stayed strictly within the claim of his patent. In the course of the May hearing of the case Mr. Coffey disavowed any intention to deliberately or contumaciously disobey any lawful order of this or any other court."

and servants and all other persons, firms, and corporations in privity with it, be, and they hereby are, perpetually restrained and enjoined from infringing [the Thomas Patents Nos. 2,950,016 and 2,989,194]." The same parties also were permanently enjoined from engaging in unfair competition with Saf-T-Boom.

Appellants pursue here the theme they unsuccessfully advocated in the trial court. Stripped of non essentials, the numerous points appellants set forth in their brief, demonstrate that they regard this proceeding as basically an infringement action involving the validity of the Thomas Patents and the Coffey Patent. They assert, in particular, that the court erred in not invalidating the Thomas Patents and in failing to find the Coffey Patent valid. We believe, as did the District Court, that appellants have missed the mark.

Contrary to the appellant's contention, the resolution of this controversy is not keyed to the question of whether the Thomas Patents are valid as to the general public. The very nature of this contempt action focuses attention upon the consent decree forming the foundation for the order to show cause. The only meritorious question for determination is whether, under the doctrine of res judicata, that valid decree operates to estop the parties who were defendants in that action, and their privies, from launching another attack upon, and from infringing, the Thomas Patents.

The general rule is that the doctrine of res judicata is applicable to a judgment rendered in a patent infringement case by a court of competent jurisdiction, and that such a judgment is binding and conclusive upon the parties to the action and those in privity with them. **Minnesota Min. & Mfg. Co. v. Superior Insulating Tape Co.**, 284 F. 2d 478, 485 (8 Cir. 1960), where Judge Van Oosterhout quotes from 206 U. S. 285: "If rights between liti-

gants are once established by the final judgment of a court of competent jurisdiction those rights must be recognized in every way, and wherever the judgment is entitled to respect, by those who are bound by it." **Siebring v. Hansen,** 346 F. 2d 474 (8 Cir. 1965) cert. den. 382 U. S. 943; **Hopp Press, Inc. v. Joseph Freeman & Co.,** 323 F. 2d 636, 637 (2 Cir. 1963); **Vandeveer v. Erie Malleable Iron Company,** 238 F. 2d 510, 514 (3 Cir. 1956) cert. den. 353 U. S. 937; **Winkelmann v. Calvert,** 154 F. 2d 1012 (Court of Customs and Patent Appeals, 1946).

As a general proposition, a valid judgment or decree in a patent infringement action **entered by agreement or consent,** operates as res judicata to the same extent as a judgment or decree rendered after a contest. **Siebring v. Hansen,** *supra*; **Hopp Press, Inc. v. Joseph Freeman & Co.,** *supra*; **Kiwi Coders Corporation v. Acro Tool & Die Works,** 250 F. 2d 562 (7 Cir. 1958); Annot. 2 A. L. R. 2d 516, 521 (1948); Annot. 97 L. ed. 1188, 1191 (1953).

Appellants submit that because of the public interest in eliminating invalid patents the consent decree should not preclude them from launching an attack on the Thomas Patents, in this proceeding. Appellants remind us of Judge Learned Hand's admonition in **Bresnick v. United States Vitamin Corporation,** 139 F. 2d 239, 242 (2 Cir. 1943) that an invalid patent "should not remain in the art as a scarecrow." **Bresnick,** a typical patent infringement action, presented issues and facts which distinguish it, and render Judge Hand's apt expression inapplicable here.

The Second Circuit again took note of this public interest aspect in the case of **Addressograph-Multigraph Corp. v. Cooper,** 156 F. 2d 483 (2 Cir. 1946), and held that the doctrine of res judicata did not apply to the consent decree that had previously been entered. This declaration by the court is apropos to the issue before us:

> "But even though we can only say that the consent decree left the issue of infringement without adjudication, nevertheless we think on grounds of public policy we ought to rule that in a decree, at least in one entered by consent, **either an adjudication of infringement, or a grant of some relief from which infringement may be inferred, is essential before any effect of res judicata can be given to it on the issue of validity**" (Emphasis supplied). Id. at 485.

In **Addressograph**, supra, the court concluded that since infringement was not adjudicated, it would be contrary to public policy to apply the doctrine of res judicata to a consent decree, in a subsequent attack on the validity of the patent. Our case is in harmony with the **Addressograph** rule. Although the consent decree, under consideration here, does not explicitly adjudge that the defendants had infringed the Saf-T-Boom device, that finding is implicit in the decree. Infringement was the key issue in the original suit; injunctive relief was sought, and pursuant to consent of the defendants, they were "permanently enjoined from infringing United States patents Nos. 2,950,016 and 2,989,194." Surely the injunctive relief granted is "relief from which infringement may be inferred."

Appellants also contend that the consent decree is not binding on all of the appellants. They concede that it applies to, and binds Coffey and tacitly admit as much as to Life Guard. Their argument is that the other individual appellants were not in privity with Coffey and Life Guard.

A decree granting an injunction is binding not only on the parties to the action, but their officers, agents, servants, employees and attorneys, "and upon those persons in active concert or participating with them who receive actual notice of the order by personal service or otherwise." Rule 65 (d) Fed. R. Civ. P., 28 U. S. C. A.; **United States v. Ross**, 302 F. 2d 831, 834 (2 Cir. 1962); 1B Moore's

Federal Practice ¶0.411, p. 1251 et seq; see also 30A Am. Jur., Judgments, § 148; Restatement, Judgments § 83.

Who are privies ordinarily presents a question of fact requiring examination of the circumstances of each case as it arises. 30A Am. Jur. Judgments, § 399; 50 C. J. S., Judgments, § 788. As hereinabove pointed out, appellants Mel and Freda Epperson, C. E. and Pauline Haile are shareholders of Life Guard. Appellant Osro Cobb is the attorney who, in concert with Coffey, brought about the incorporation of Life Guard. Appellant Sansom actually manufactured the device for Life Guard. The District Court found that the parties just named are in direct privity with Coffey and Life Guard. The record contains substantial evidence to support this finding—certainly it is not clearly erroneous.

In summary, the history of this litigation, and the posture of the instant proceeding in the District Court, reduced the issues to the narrow question of whether the consent decree of May 31, 1962 operates to conclusively adjudicate the rights of the parties, and those in privity with them, in the subject matter of the original infringement action. The interest of the general public in the Thomas Patents, and the rights of parties not affected and bound by, the consent decree, to attack the validity of such patents in a proper proceeding, are questions not germane in this case, and are not being determined.

From the record we are satisfied that the District Court properly concluded that the appellants are bound by the consent decree and that they had, in violation of the injunction, infringed the Thomas Patents.

We affirm.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX B.

Decree.

United States Court of Appeals for the Eighth Circuit.

No. 18,209. September Term, 1965.

Crane Boom Life Guard Co., Inc., Mel Epperson, Freda Epperson, C. E. Haile, Pauline Haile, Osro Cobb, C. H. Sansom and S. A. Coffey,
Appellants,

vs.

Saf-T-Boom Corporation, C. H. Earl and Arthur J. Thomas.

Appeal From the United States District Court for the Eastern District of Arkansas.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Arkansas, and was argued by counsel for appellants.

On Consideration Whereof, It is now here Ordered, Adjudged and Decreed by this Court that the Supplemental Decree of the said District Court in this cause be, and the same is hereby, affirmed.

June 30, 1966.

APPENDIX C.

Consent Decree.

(Filed in U. S. District Court on May 31, 1962.)

In the United States District Court,
Eastern District of Arkansas,
Western Division.

Saf-T-Boom Corporation,
Plaintiff,

v.

Crane-Boom Guard Company, Inc., H. P. Merritt, Jr., S. A. Coffey, and Arthur J. Thomas,
Defendants.

No. LR-62-C-66.

On this day, the trial of this cause having been partially finished, the plaintiff and defendants by and through their respective attorneys, E. M. Arnold and Shelby R. Blackmon, announced to the Court that the parties have agreed upon a consent decree in this cause.

It Is Therefore Considered, Ordered, Adjudged and Decreed by the Court in accordance with the agreement and consent of the parties announced to the Court, that the defendants, and each of them be and they hereby are permanently enjoined from infringing United States patents Nos. 2,950,016 and 2,989,194.

It Is Further Ordered, Adjudged and Decreed that no damages be awarded to either the plaintiff or the defendants.

It Is Further Ordered, Adjudged and Decreed that the costs of this action be and they are hereby assessed against the plaintiff.

J. Smith Henley,
United States District Judge.

Date: May 31, 1962.

Approved:

E. M. Arnold,
Attorney for Plaintiff.

Shelby R. Blackmon,
Attorney for Defendants.

APPENDIX D.

(Memorandum Opinion of U. S. District Court.)

(Filed in U. S. District Court on July 15, 1965.)

In the United States District Court,
Eastern District of Arkansas,
Western Division.

Saf-T-Boom Corporation,
Plaintiff,
v.
Crane Boom Guard Company, Inc., H. P. Merritt, Jr., S. A. Coffey and Arthur J. Thomas,
Defendants.
LR-62-C-66.

This protracted case which is a combination patent infringement suit and contempt proceeding has been tried to the Court without a jury. Post-trial memorandum briefs have been submitted and considered. This opinion incorporates the Court's findings of fact and conclusions of law dealing with all issues between the parties.

Plaintiff, Saf-T-Boom Corporation, is an Arkansas corporation and is the assignee and owner of the so-called Thomas patents, Nos. 2,950,016 and 2,989,194. Defendant Crane Boom Life Guard Company, Inc., another Arkansas concern, is the assignee and owner of the so-called Coffey patent, No. 3,100,575. All of those patents describe an insulating device for installation on the meta booms of hoisting machinery such as cranes for the purpose of protecting the operators of the machinery from death or injury resulting from the booms coming into contact with

uninsulted, high tension electric power lines. The Thomas device was developed by Arthur J. Thomas, now of Little Rock, Arkansas, who is a party to the litigation. The Coffey patent was obtained in 1963 by S. A. Coffey, who is also a party to the suit, after the Court had entered and had later refused to set aside a consent decree enjoining Crane-Boom Guard Company, Inc., H. P. Merritt, Jr., S. A. Coffey, and Arthur J. Thomas from infringing the Thomas patents.

The consent decree was entered on May 31, 1962, after a partial trial of this case which had been filed by Saf-T-Boom Corporation against the corporation and the individuals above mentioned. Thereafter, the defendants moved to set the decree aside. That motion was heard in November 1962 and was denied on January 11, 1963. In connection with the denial the Court filed a rather full memorandum opinion dealing with the case as it stood at that time. The Court now makes reference to that opinion.

In the course of the hearing on the motion to vacate the consent decree it came to light that Mr. Coffey was in the process of obtaining the Coffey patent. Following the issuance of the patent Coffey and certain associates who have been brought into the case organized a corporation known as Crane Boom Life Guard Co., Inc., and Mr. Coffey assigned his patent to that corporation.

Crane Boom Life Guard Co. made an arrangement with Lon and Pat Weyand, who operate the Weyland Machine Shop at Hot Springs, to manufacture the device covered by the patent. The Weylands manufactured a number of the devices which were sold by Crane Boom Life Guard Co. in competition with the boom guards sold by Saf-T-Boom Corporation.

In April 1964 Saf-T-Boom Corporation, hereinafter Saf-T-Boom, commenced contempt proceedings against the old

Crane-Boom Guard Co.,[1] H. P. Merritt, Jr., and S. A. Coffey.[2] It was alleged that the respondents were infringing the Thomas patents and were thereby violating the consent decree.

On application of Saf-T-Boom the Court issued a show cause order, and the case immediately became extremely complicated from the standpoint of what may be called the parliamentary situation.

The post-1963 record is voluminous, and the Court will make no effort to list or abstract all of the pleadings and counterpleadings filed by the parties. The Court will not even undertake to list and identify all of the parties who have come into the case since the show cause order was entered.

Succinctly stated, Saf-T-Boom contends that the Thomas patents are valid and that Crane Boom Life Guard Co., Inc., hereinafter Life Guard, and those associated with it are or have been marketing a device which is an exact duplicate of Saf-T-Boom's device. Saf-T-Booms contends further that aside from patent infringement Life Guard has been foisting off its device as being that of Saf-T-Boom, and has been guilty of unfair competition. On the infringement issue Saf-T-Boom contends specifically that Life Guard is infringing claims 1, 4, 6, and 7 of Thomas Patent No. 2,950,016. Saf-T-Boom desires to have its adversaries, both corporate and individual, punished for contempt; desires an injunction against further alleged patent infringement and unfair competition; and finally prays for a money judgment.

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1 It is the understanding of the Court that Coffey's original corporation was dissolved after the Court refused to set the consent decree aside or possibly even before. In any event, the matter is not material in view of the presence in the case of Coffey's present corporation.

2 Following the settlement which brought about the entry of the consent decree, Arthur J. Thomas was given employment by Saf-T-Boom and was not named as a respondent in the contempt proceedings. His position in the case is somewhat ambiguous. While as assignor of the Thomas patents, he is bound to uphold them, it seems clear that his real loyalty is to his friend and former business associate, Mr. Coffey.

Life Guard and its allies contend, on the other hand, that the Thomas patents are invalid, and that Saf-T-Boom is infringing the Coffey patent. They deny that they or any of them are guilty of contempt of this Court, their position being that one cannot infringe an invalid patent. Life Guard seeks appropriate relief directed at the alleged infringement of the Coffey patent by Saf-T-Boom.

At the commencement of the trial of the current issues, which took place in May of this year, counsel for Life Guard[3] conceded, and the Court now finds independently, that the Coffey device infringes the Thomas patents, if those patents are valid. In this connection the Court fully agrees with Saf-T-Boom that the boom guard marketed by Life Guard is essentially a duplicate of the device described in the Thomas patents. Both of the devices accomplish the same end, by the same means, and in the same manner. As a matter of fact, apart from the possession of the Coffey device of a hook on the end of the guard, the devices are practically indistinguishable. And in the Court's estimation the hook on the Coffey device is not of sufficient importance to distinguish it from the Thomas device as far as patent law is concerned.

Life Guard urges that the Thomas patents are invalid because of prior disclosure and use of the device and prior descriptions of it in published literature, the prior disclosure, use and publication allegedly going back as far as 1952. The record is not without substantial evidence to sustain this attack on the patents, but the Court is convinced that on account of the 1962 consent decree Life Guard has no standing to launch the attack.

The doctrine of *res judicata* is applicable to judgments rendered in patent cases; judgments in such cases are binding upon the immediate parties and those in privity

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3 This and later references to Life Guard include the individuals aligned with Life Guard in the case.

with them. Schnell v. Peter Eckrich & Sons, Inc., 365 U. S. 260; United States Pipe & Foundry Co. v. Woodward Iron Co., 4 Cir., 321 F. 2d 98; Minnesota Mining & Manufacturing Co. v. Superior Insulating Tape Co., 8 Cir., 284 F. 2d 478; Vanderveer v. Erie Malleable Iron Co., 3 Cir., 238 F. 2d 510. And a consent decree has the same force and effect as a decree entered after a plenary trial on the merits. Siebring v. Hansen, 8 Cir., ... F. 2d ..., decided June 2, 1965, affirming Hansen v. Siebring, N. D. Iowa, 231 F. Supp. 634; Kiwi Coders Corp. v. Acro Tool & Die Works, 7 Cir., 250 F. 2d 562. A consent decree which adjudicates the validity of a patent and enjoins infringement is *res judicata* in a subsequent contempt proceeding between the same parties and their privies; in such a proceeding the validity of the patent is not an issue. Siebring v. Hansen, supra; Hopp Press, Inc. v. Joseph Freeman & Co., 2 Cir., 323 F. 2d 636; Kiwi Coders Corp. v. Acro Tool & Die Works, supra; Wadsworth Electric Mfg. Co. v. Westinghouse Electric & Mfg. Co., 6 Cir., 71 F. 2d 850; D. E. Stearns Co. v. Brashear, W. D., Mo., 145 F. Supp. 735.

The applicability of the foregoing principles to Life Guard is clear. The consent decree bound Coffey, Merritt, and Thomas personally, as well as Crane Boom Guard Company, Inc. Life Guard is in direct privity with Coffey, and in the Court's view that privity includes not only the corporation itself but also the corporation's founders and stockholders.

It is true that the consent decree in this case does not in terms say that the Thomas patents are valid, but the validity of those patents was directly in issue in the case originally, and the Court thinks that the decree which was entered and which enjoined infringement of the patents by necessary implication included an adjudication of their validity as far as the defendants and their privies

rectly or indirectly, ingeniously or ingenuously, and if in so doing they infringe the Thomas patents, they may well be faced with very serious consequences should a new contempt proceeding be filed and prosecuted successfully.

Each side will bear its own costs. An appropriate decree will be entered.

Dated this 15th day of July, 1965.

/s/ J. Smith Henley,
United States District Judge.

APPENDIX E.

(Supplemental Decree of U. S. District Court.)

(Filed in U. S. District Court on July 15, 1965.)

Pursuant to memorandum opinion this day filed herein, to which reference is hereby made, It is by the Court Considered, Adjudged, and Decreed:

1. That the original consent decree entered in this cause on May 31, 1962, whereby the original defendants herein, namely, Crane Boom Guard Company, Inc., H. P. Merritt, Jr., S. A. Coffey, and Arthur J. Thomas were enjoined and restrained from infringing United States Letters Patent No. 2,950,016 and No. 2,989,194 be, and the same hereby is, continued in full force and effect.

2. That Crane Boom Life Guard Company, Inc., which is now a party to this litigation, together with its officers, agents, employees, and servants and all other persons, firms, and corporations in privity with it, be and they hereby are, perpetually restrained and enjoined from infringing the aforementioned Letters Patent.

3. That without limiting the scope of the original consent decree or of this decree, the parties affected by the Court's injunctions herein are specifically restrained and enjoined from infringing the aforementioned Letters Patent by directly or indirectly manufacturing, selling or using the crane boom guard device described and covered by United States Letters Patent No. 3,100,575, the so-called Coffey Patent, which patent the Court now holds and declares to be invalid.

4. That without limiting or diminishing the force of the original consent decree herein or of this decree enjoining patent infringement as aforesaid, the parties affected by said injunctions and all in privity with such parties are

additionally perpetually restrained and enjoined from engaging in unfair competition with plaintiff, Saf-T-Boom Corporation, in the sale of crane boom guard devices; that is to say, such parties and their privies are perpetually restrained and enjoined from selling or offering for sale any crane boom guards on the pretense that they have been manufactured by Saf-T-Boom Corporation, from selling or offering for sale any crane boom guards deceptively similar to devices manufactured by Saf-T-Boom Corporation, and from using advertising matter or other materials deceptively similar to such matter or materials employed by Saf-T-Boom Corporation which depict pictorially or otherwise, a crane boom guard device deceptively similar to the device manufactured by Saf-T-Boom.

5. That the so-called "Complaint" filed herein by Crane Boom Life Guard Company, Inc., against Saf-T-Boom Corporation and C. H. Earl and Arthur J. Thomas on May 4, 1964, be, and the same hereby is, dismissed with prejudice as being without merit.

6. That the contempt proceedings initiated in this cause by Saf-T-Boom Corporation against S. A. Coffey and others be, and the same hereby are, dismissed, and that the prayer of Saf-T-Boom for a money judgment on account of patent infringement and unfair competition be, and it hereby is, denied.

7. That each side bear all of the costs which it has laid out, expended, or incurred in this action since January 11, 1963.

Dated this 15th day of July, 1965.

/s/ J. Smith Henley,
United States District Judge.